

**REDACTED FOR PUBLIC FILING**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

GUCCI AMERICA, INC.,

Plaintiff,

-against-

GUESS?, INC., MARC FISHER FOOTWEAR  
LLC, THE MAX LEATHER GROUP/CIPRIANI  
ACCESSORIES, INC., SEQUEL AG, K&M  
ASSOCIATES L.P., VIVA OPTIQUE, INC.,  
SIGNAL PRODUCTS, INC. and SWANK, INC.,

Defendants.

Civil Action No. 09cv4373  
(SAS)

**DECLARATION OF ROBERT C. WELSH  
IN SUPPORT OF DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**

ROBERT C. WELSH hereby declares as follows under penalty of perjury:

1. I am a partner in the law firm of O'Melveny & Myers LLP, counsel to Defendants Guess?, Inc., Signal Products, Inc., The Max Leather Group/Cipriani Accessories, Inc., and Swank, Inc. (collectively, "Defendants") in this action. I submit this declaration in support of Defendants' motion for summary judgment. All of the facts set forth herein are known to me personally, and if called as a witness, I could and would testify competently thereto.

2. Attached hereto as exhibits hereto are true and correct copies of the following documents:

Exhibit A:	Excerpts from Guess?, Inc.'s 2010 Form 10-K bearing Bates numbers GSE00098690, GSE00098694, GSE00098695, GSE00098699; excerpts from Guess?, Inc.'s 2011 Form 10-K bearing Bates numbers GSE00105130, and GSE00105210; and pdfs of documents produced in their native format bearing Bates numbers GSE00104402, GSE00104403, GSE00104488, GSE00105046, GSE00105048, GSE00104364, GSE 00104487, GSE 00104396, and GSE 00104978.
Exhibit B:	Excerpts from the deposition of Nicole Marra conducted on April 6, 2011; excerpts from the deposition of Gucci's 30(b)(6) witness Terilyn

	Novak conducted on April 8, 2010; and excerpts from the deposition of Gucci's 30(b)(6) witness Sandro Risi conducted on September 22, 2010.
Exhibit C:	Excerpts from Pinault-Printemps Redoute 2008 Financial Document bearing Bates numbers GSE00092861, GSE00092905, and GSE00092907; excerpts of Income Statements Produced by Gucci America bearing Bates numbers GUCCI019461 and GUCCI019465; and excerpts from the deposition of Laura Lendrum conducted on February 9, 2011.
Exhibit D:	Excerpts from the deposition of Guess's 30(b)(6) witness Theresa McManus conducted on September 14, 2010; excerpts from the deposition of Ariane Klein conducted on September 13, 2010; and excerpts of the deposition of Candace Kearney conducted on March 4, 2010.
Exhibit E:	Documents illustrating Guess's use of the Script Guess design bearing Bates numbers GSE0042708, GSE0044004, GSE0005862, GSE0004135, GSE0007100, GSE0007109, GSE0007082, GSE0007151, GSE0007155, and GSE0007156; and documents illustrating Guess's various signatures and designs bearing Bates numbers SIGH00000757, SIGH00000753, SIGN00010864, SIGN00010864, and SIGN00007419.
Exhibit F:	Documents containing exemplars of Guess's Square G mark that Gucci has advised Defendants infringe Gucci's alleged trademark rights, bearing Bates numbers GSE00006863, GSE00006946, GSE00078542, GSE00078583 and pdfs of documents produced in their native format bearing Bates numbers SIGN00012053, SIGN00012058, SIGN00012061, SIGN00012064, SIGN00012067, SIGN00012075, SIGN00012080, SIGN00012085; Documents demonstrating Guess use of its Quattro G Pattern on a beige background prior to 2006 bearing Bates numbers GSE00006295-GSE00006297.
Exhibit G:	Documents demonstrating that products bearing the Quattro G Pattern were offered for sale since early 2005 bearing Bates Numbers SIGN00011872 and SIGN000011874; Guess's Trademark Registration for the standalone Quattro G mark bearing Bates number GSE00099045; and Guess's Trademark Registration and exemplars for its Quattro G Pattern bearing Bates numbers GSE00008688, GSE00008689, GSE00008091- GSE00008096, GSE00008098, and GSE00008100-GSE00008102.
Exhibit H:	Communications regarding the use of a green-red-green stripe bearing Bates numbers GSE00068053-GSE00068057, GSE00070950-GSE00070950, and GSE00071019-GSE00071020; and excerpts from the deposition of Paul Vando conducted on May 7, 2010.

Exhibit I:	Excerpts from <i>Women's Wear Daily's</i> "WWD 100" survey from 2005-2008 bearing Bates numbers GSE00094858, GSE00094863, GSE00094872- GSE00094874, GSE00094878- GSE00094879, GSE00094881- GSE00094882, GSE00094888, GSE00094890, GSE00094891, and GSE00094893.
Exhibit J:	Excerpts from Guess's Damages Expert Dr. Alan Goedde's Report dated May 25, 2011; and excerpts from Interbrand's Best Global Brands List bearing Bates numbers GSE00103369, GSE00103372, GSE00098857, GSE00098858, GSE00098870, GSE00098871, and GSE00098883.
Exhibit K:	Excerpts from the deposition of Gucci's 30(b)(6) witness Jonathan Moss conducted on December 1, 2009; excerpts from the deposition of Jonathan Moss conducted on April 28, 2011; excerpts of the deposition of Vanni Volpi conducted on February 22, 2011; and excerpts of the deposition of Laura Lendrum conducted on February 14, 2011.
Exhibit L:	Declaration of Milton Springut dated December 20, 2010; May 4, 2011 Letter from Mr. Ederer to Mr. Welsh; documents relating to Gucci's investigation of Guess's use of its Square G mark bearing Bates numbers GUCCI024092-GUCCI024094, GUCCI024089, GUCCI024323-GUCCI024325, and GUCCI024327; documents regarding the G Twirl name bearing Bates numbers GSE00007370, GSE00007371, and GUCCI09288.
Exhibit M:	Excerpts from Expert Report of Michael G. Kessler dated May 25, 2011; excerpts of communications between Gucci America's outside counsel and Allan Tuttle and Iolanda Tursi Bates numbered GUCCIK000002531, GUCCIK000002749, and GUCCIK000006434.
Exhibit N:	Excerpts from Expert Report of Gabriele Goldaper dated May 25, 2011; Excerpts from Expert Report of Gary D. Krugman dated May 25, 2011.
Exhibit O:	Documents bearing Bates numbers GSE00006525, GSE00006558, GSE00039529, GSE00039532, GSE00006589, GSE00006672, GSE00039716, GSE00039722, GSE00039735, and GSE00039749.

3. In this litigation, co-defendant Marc Fisher Footwear LLC ("Marc Fisher"), which is represented by separate counsel, produced a document bearing Bates numbers MF005581-MF005589 that identified the marks and designs at issue contained on the footwear styles manufactured and sold by Marc Fisher. Guess produced a native Excel document bearing Bates

number GSE00105269, which contained sales information for the Marc Fisher footwear styles that were sold in Guess stores and on the Guess website. A comparison of these documents shows that in 2008, before Guess discovered the use of the green-red-green stripe and instructed Marc Fisher to discontinue use of that design, only two Guess men's footwear styles containing a green-red-green stripe were offered for sale in Guess's stores or on its website—the Mette (color code: BRMFB) and the Melrose (color code: DBRNL). Guess's sales data also shows that Guess sold 96 units of the Mette. These documents are voluminous and are not included as exhibits, but can be provided to the Court upon request.

4. Signal Products, the Guess handbag licensee, produced a native Excel document bearing Bates number SIGN00012092 showing that it spent \$4,000,000 in 2010 advertising Guess products. (This document is voluminous and not included as an exhibit, but can be provided to the Court upon request.) Combined with the \$31.7 million in advertising expenses that Guess incurred in 2010 (*see* Ex. A at A6), the record shows that Guess and Defendants spent at least \$35.7 million in 2010 promoting Guess products and the Guess brand.

5. In this litigation, Gucci produced lengthy privilege logs containing the following entries and descriptions showing Alan Tuttle's and Iolanda Tursi's involvement in Gucci's U.S. trademark activities in the 1999-2004 period: Plaintiff Gucci America Inc.'s Further Revised Amended Privilege Log (2/1/11), Entry 168 (12/28/1999 Memo from K. Lombardo to Mr. Tuttle concerning "trademark infringement and counterfeiting issues" and reflecting legal advice from Mr. Springut); Entry 170 (3/18/03 Email from Mr. Moss to Mr. Tuttle and Ms. Tursi "reflecting legal advice received from [Gucci America's] outside legal counsel concerning the negotiation of terms of settlement agreement with trademark counterfeiter/infringer"); Entry 171 (3/23/03 Email from Mr. Moss to Mr. Springut, Mr. Tuttle, and Ms. Tursi "reflecting legal

advice received from [Gucci America's] outside legal counsel concerning the negotiation of terms of settlement agreement with trademark counterfeiter/infringer"); Entry 172 (3/25/03 Email from Ms. Tursi to Mr. Moss with copy to Mr. Tuttle "reflecting legal advice received from [Gucci America's] outside legal counsel concerning the negotiation of terms of settlement agreement with trademark counterfeiter/infringer"). The privilege logs are voluminous and are not included as exhibits, but can be provided to the Court upon request.

6. In this litigation, Defendants produced native Excel documents showing U.S. sales figures for their respective products bearing the marks and designs at issue. SIGN00012093 contains sales information for Signal Products, the handbag licensee; MAXCIP00093411 contains sales information for Max Leather, the belt licensee; SWK00004717 contains sales information for Swank, the small leather goods licensee; MF024866 contains sales information for Marc Fisher, the footwear licensee, GSE00104767 contains sales information for Sequel AG, the watch licensee; and GSE00104768 contains sales information for Viva Optique, the eyewear licensee. These documents are voluminous and are not included as exhibits, but can be provided upon request.

7. As shown in its sales report, Signal Products only was able to access sales data from its accounting system for the years 2002 and onward; Max Leather for the years 2005 and onward; Sequel AG for the years 2000 and onward; and Viva Optique for the years 2000 and onward. None of the licensee defendants were able to obtain sales information prior to 2000.

8. The sales data that does exist, however, shows that handbags, eyewear, and watches bearing Guess's Square G mark were sold in the U.S. prior to 2003. (SIGN00012093, GSE00104767, GSE00104768.) Other documents produced in this action show that the Square G also appeared on footwear, belts, and wallets prior to 2003. (*See, e.g.*, Welsh Ex. F at F1-12.)

9. At my direction, a computation was made of the aforementioned existing sales data to determine how many Guess products bearing the Square G mark were sold in the U.S. in 2003 or earlier. This computation showed that between 2000 and 2003, 1,174,886 units of Guess-branded accessory products bearing a Square G mark were sold in the U.S., totaling \$30,168,663.

10. The sales data for Sequel AG and a separate native Excel document provided by Viva Optique (GSE00104766) also contained the specific retail customers to whom Square G products were sold between 2000 and 2003. In addition to Guess, the documents list hundreds of retail outlets, including Macy's, Dillard's, Filene's, Robinsons-May, and Luxottica Retail.

11. At my direction, a computation was made of the aforementioned existing sales data to determine how many Guess products bearing the Quattro G Pattern were sold in the U.S. since 2005. This computation showed that since 2005, 2,442,862 units of Guess-branded accessory products bearing a Quattro G Pattern were sold in the U.S., totaling \$56,118,796.

12. At my direction, an analysis also was conducted of the various privilege logs produced by Gucci in this action to determine how many communications they contained concerning Guess products and designs. This analysis showed that between 1999 and 2007, there were 53 communications between 1999-2007 regarding Guess products and designs, including the Square G mark. These communications were between and among individuals in Gucci America's legal department, Guccio Gucci, Gucci Group and/or their outside counsel.

13. Among these are communications from April and May 2006 between and among Jonathan Moss (Gucci America's Legal Counsel), Jessica Murray (Gucci America's paralegal), Carlo Imo (General Counsel of Guccio Gucci), and outside counsel (including Gucci's counsel in this lawsuit, Mr. Ederer) regarding an "investigation" into a handbag bearing SKU #

SI502290—which contained the Square G mark. (Plaintiff Gucci America Inc.’s Further Revised Amended Privilege Log (2/1/11), Entries 3-5.)

14. Also among the communications on Gucci’s privilege logs are communications from June 2007 between and among Moss, Murray, Vanni Volpi (Guccio Gucci’s Intellectual Property Counsel), and Mr. Ederer regarding several Guess products, including several that contained Guess’s Square G mark. (Plaintiff Gucci America Inc.’s Further Revised Amended Privilege Log (2/1/11), Entries 34-38.)

15. In this litigation, Gucci produced hundreds of documents evidencing the numerous lawsuits and opposition proceedings that were filed by Gucci America in the U.S. between 1997 and 2009, and cease and desist letters that were sent by Gucci America to third parties in that same time period. Analysis of these documents shows that in the 1997-2009 period Gucci commenced at least 78 lawsuits or opposition proceedings against third parties and sent at least 54 cease and desist letters.<sup>1</sup> These documents are voluminous and are not attached as exhibits

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<sup>1</sup> **Lawsuits:** GUCCI007575 -GUCCI007761; GUCCI007814 -GUCCI007969; GUCCI009702-GUCCI009719; GUCCIK000002254 -GUCCIK000002281; GUCCIK000002468-GUCCIK000002469; GUCCIK000002471-GUCCIK 000002472; GUCCIK000002782-GUCCIK000002800; GUCCIK000002837-GUCCIK000002857; GUCCIK000003278-GUCCIK000003290; GUCCIK000008261-GUCCIK000008277; GUCCIK000008615-GUCCIK000008627; GUCCIK000008972-GUCCIK000008983; GUCCIK000009377-GUCCIK000009393; GUCCIK000009754-GUCCIK000009764; GUCCIK000009782-GUCCIK000009807; GUCCIK000010533-GUCCIK000010556; GSE00100032-GSE00100217.

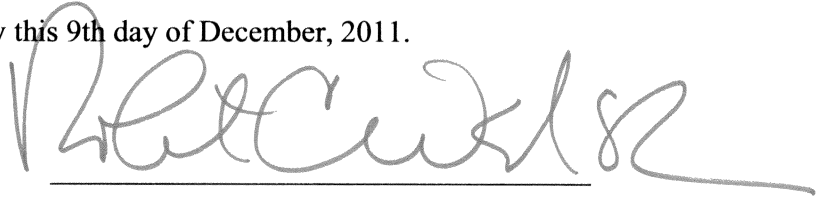
**Trademark Oppositions:** GUCCI007970- GUCCI007989; GUCCI009843-GUCCI009853; GUCCI009871-GUCCI009873; GUCCI009900-GUCCI009901; GUCCI009912-GUCCI009913; GUCCI009917-GUCCI009920; GUCCI009938-GUCCI009944; GUCCI009973-GUCCI009975; GUCCI009999-GUCCI010000; GUCCI010018-GUCCI010020; GUCCI010044-GUCCI010048; GUCCI010073-GUCCI010077; GUCCI010091-GUCCI010092; GUCCI010163-GUCCI010164; GUCCI010181-GUCCI010184; GUCCI010197; GUCCIK000008678-GUCCIK000008683; GUCCIK000008789-GUCCIK000008794; GUCCIK000009185-GUCCIK 000009193.

**Cease and desist letters:** GUCCIK000002776-GUCCIK000002779; GUCCIK000002805-

but can be produced upon request.

16. Defendants sought to take discovery on the specific awareness that several Gucci senior attorneys, including Alan Tuttle, Iolanda Tursi, and Lorenza Bencini had about the use of the Square G mark in 1999 and 2002. Defendants were unable to obtain depositions of those individuals, however, because we were informed by Gucci that Tuttle died in 2004 and Tursi and Bencini no longer work for the Gucci entities.

Declared under penalty of perjury this 9th day of December, 2011.

A handwritten signature in dark ink, appearing to read 'Robert C. Welsh', is written over a horizontal line.

ROBERT C. WELSH

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GUCCIK000002808; GUCCIK000002811-GUCCIK000002814; GUCCIK000002815-GUCCIK000002818; GUCCIK000002820-GUCCIK000002824; GUCCIK000002826-GUCCIK000002829; GUCCIK000002879-GUCCIK000002880; GUCCIK000002885-GUCCIK000002932; GUCCIK000003184-GUCCIK000003186; GUCCIK000003195-GUCCIK000003198; GUCCIK000003207-GUCCIK000003210; GUCCIK000003211-GUCCIK000003214; GUCCIK000008673-GUCCIK000008677; GUCCIK000009135-GUCCIK000009141; GUCCI 009214-GUCCI 009287; GUCCI009797-GUCCI009842; GUCCI010089-GUCCI010090.